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310 CMR 37.00: LANDFILL CAPPING GRANT PROGRAM

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37.01: Authority and Purpose

(1) Pursuant to St. 1983, c. 723, § 9H as amended by St. 1984, c. 233, § 9V the Department of Environmental Quality Engineering is authorized to expend a sum not exceeding \$10,000,000 "for a program of grants to cities, towns and solid waste disposal districts for the purpose of planning, design, and construction of projects for closure, in an environmentally sound manner of publicly-owned landfills." Grants for such projects may be up to 80% of eligible costs such as are determined by the Department. Any landfill closed pursuant to St. 1983, c. 723 shall be used solely for the purposes of active or passive recreation.

(2) 310 CMR 37.00 establish the criteria and priorities for the award of Landfill Capping Grant funds to selected communities and provide guidelines for the administration and disbursement of such funds in compliance with the requirements of M.G.L. c. 30A, §§ 1(5) and 3. Authority to adopt 310 CMR 37.00 is separately conferred by M.G.L. c. 21A, § 2(28).

(3) The objectives of the Landfill Capping Grant Program are as follows:

- (a) To monitor various closure or post-closure techniques, including some new approaches, to determine their effectiveness;
- (b) To promote the closure and post-closure monitoring of selected landfills;
- (c) To ensure that any post-closure use of any landfill receiving funding from this program be limited to active or passive recreation;
- (d) To protect the public and the environment from the risks associated with improperly closed landfills.

37.02: Definitions

As used in 310 CMR 37.00 the following definitions shall apply unless the context clearly indicates otherwise:

Acts - Massachusetts Laws: St. 1983, 723, § 9H, as amended by St. 1984, c. 233, § 9V.

Applicant - a city, town or solid waste disposal district which is applying to the Department for a Landfill Capping Grant.

Application - the project Application Form filled out and submitted to the Department with all required supporting documents.

Application Period - the inclusive dates established by the Department pursuant to 310 CMR 37.05(1) for the receipt of an application.

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Closure or Closure Project - a project for deactivation and completion of a solid waste facility, including without limitation, planning, design and implementation of capping, containment, completion, and other activity necessary or incidental to minimize or prevent damage, or threats of damage to public health, safety or welfare, or the environment, and which is carried out pursuant to a Department-approved Plan.

Deed Restriction - a restrictive covenant imposed on the land on which the landfill to be closed under St. 1983, 723, § 9H, as amended by St. 1984, c. 233, § 9V is located, limiting future use of said land to active or passive recreational use that will not threaten the public health, the environment, or the integrity of the cap.

Department - the Department of Environmental Quality Engineering.

Division - The Division of Solid Waste.

Grant Agreement - the document(s) containing the grant terms and conditions which upon signature by the Department's authorized representative and the applicant's authorized representative, constitutes a binding contract.

Grantee - a grant applicant who accepts and receives a Landfill Capping Grant under 310 CMR 37.00.

January 12, 1984 - enactment date of St. 1983, c. 723.

Landfill - a method of disposing of solid wastes on land in such a manner as will prevent a nuisance or a danger to the public health by reason of odor, dust, fires, smoke, air pollution, the breeding or harboring of rodents, flies, or vermin, or other similar cause.

Landfill Capping Grant - a grant awarded under the Landfill Capping Grant Program.

Local Share - funds and/or donation of force account labor provided by the grantee for the unfunded share of the eligible and ineligible project costs.

Owned by the Applicant - ownership by the applicant in fee simple of title or interest in the site of the project, including necessary easements and rights-of-way, as the Department finds sufficient to assure undisturbed use and possession for the purposes of construction, monitoring and maintenance of the project.

Priority List - the list established by the Department upon which eligible applicants are ranked for funding purposes by numerical ratings based upon criteria set forth in 310 CMR 37.07.

Project Application Form - the form prescribed by the Department to be used by Applicants in requesting a Landfill Capping Grant.

Ranking - the position on the priority list of a rated project relative to all other rated projects.

Rating - score assigned by the Department to an applicant's project.

37.03: Project Eligibility

(1) In General. Eligible projects satisfy the following requirements:

- (a) the applicant is a city, town or solid waste district;
- (b) the project site is owned in its entirety by the applicant;
- (c) The applicant will agree, as a precondition to receiving a Landfill Capping Grant, that it will restrict future use of the landfill site to passive or active recreation that will not threaten the public health, the environment, or the integrity of the closure methods employed;

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(d) the closure project to which grant funds would be applied:

1. has commenced since January 12, 1984; or
2. is ongoing at the time a grant application is filed; or
3. will commence within 12 months of a grant award.

For purposes of 310 CMR 37.03 a closure project is deemed to have commenced upon execution of a valid contract for construction of the closure.

(e) the closure, whether completed, underway or proposed, is in conformity with, or will conform to, a Department-approved plan; and

(f) the project includes a demonstration component which may involve standard closure technology or may be an innovative approach but must in all instances:

1. provide measurable information to document its effectiveness;
2. generate information of sufficiently general applicability to further the advancement of effective landfill closure and post-closure monitoring and maintenance; and
3. include documentation and reporting of project information under supervision approved by the Department.
4. In instances where closures have already been completed or are near completion, 310 CMR 37.03 may be met by addition of the demonstration component to the completed closure.

(2) Actual Scope. The actual scope of each eligible project shall be as approved by the Department in its review and approval of the project plans and specifications pursuant to 310 CMR 19.00: *Solid Waste Management*.

37.04: Project Costs

(1) In General. Eligible projects costs shall be the final approved costs as determined by the Department and stated in the final grant offer. Eligible costs shall not include order increases, extra work orders, or the cost of any project expansion or modification unless approved in advance by the Department. Grantees will be responsible for providing a local share sufficient to cover all unfunded project costs. In no event shall the funded portion of the project exceed limitations set in 310 CMR 37.09.

(2) Eligible Costs. Eligible costs shall be costs within the scope of the project and determined by the Department to be eligible as provided in 310 CMR 37.04 (2) and (4). The following categories define the scope of eligible project costs. The Department may, at its sole discretion, choose not to fund an item, even though it falls within one of these categories:

(a) Pre-closure:

1. Planning and design necessary to the preparation of a project application form and closure plan.

(b) Closure:

1. construction of surface drainage control;
2. construction of leachate collection system;
3. construction of sedimentation basins;
4. construction of seepage basins;
5. construction of leachate disposal and treatment systems;
6. construction of groundwater monitoring wells;
7. construction of gas monitoring wells;
8. construction of landfill gas migration, venting and control system;
9. surface regrading;
10. purchase, transportation and the application of final cover material;
11. establishment of vegetative cover;
12. full-time site supervision by a staff person under the guidance of a professional engineer; and
13. other closure component(s) as approved by the Department.

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- (c) Conducting post-closure:
 - 1. monitoring of the cap;
 - 2. gas monitoring, including sampling and analysis;
 - 3. groundwater and surface water sampling and analysis;
 - 4. monitoring and analysis of the demonstration component.

(3) Ineligible Costs. Ineligible project costs shall be costs outside the scope of the project and any costs determined by the Department to be ineligible as provided in 310 CMR 37.04(3) and (4). Such ineligible costs shall include, without limitation:

- (a) Pre-closure:
 - 1. preparation of project application form;
 - 2. fiscal and administrative costs;
 - 3. ordinary operating expenses of government;
 - 4. interest and other finance charges;
 - 5. travel costs;
 - 6. any undocumented costs;
 - 7. removal of illegally-disposed waste; and
 - 8. any cost committed to prior to January 12, 1984.
- (b) Closure:
 - 1. personal injury compensation or damages arising from the project;
 - 2. salaries paid to regular employees of the applicant other than force account labor approved by the Department;
 - 3. bonus payments to contractors for completion of construction earlier than the date specified in a contract;
 - 4. interest on bonds or any other form of indebtedness required to finance project costs;
 - 5. long-term site security other than fencing; and
 - 6. any costs committed to prior to January 12, 1984.
- (c) Post-closure:
 - 1. operation and maintenance of leachate collection system;
 - 2. operation and maintenance of groundwater monitoring system;
 - 3. operation and maintenance of gas monitoring and venting systems;
 - 4. operation and maintenance of methane recovery system;
 - 5. maintenance of top and side slopes at a proper grade, including correcting depressions;
 - 6. maintenance of vegetative cover;
 - 7. maintenance of surface drainage controls; and
 - 8. general maintenance.

(4) Other Costs. The eligibility or ineligibility of any costs that do not clearly fall into the categories listed in 310 CMR 37.04 shall be determined in each instance by the Department. Funding of such shall be at the sole discretion of the Department.

37.05: Application Process

(1) Application Period. To disburse the funds available for Landfill Capping Grants, the Department shall establish an application period of 120 consecutive calendar days during which applications will be accepted for consideration. The Department may extend the application period at its discretion. The Department will provide prior public notice of the funding availability and the application period or any extension of it by newspaper advertisements throughout the Commonwealth and by mailing notices to all municipalities.

(2) Application Deadline. Applications for Landfill Capping Grants received after the final day of the application period set by the Department pursuant to 310 CMR 37.05(1), or any extension thereto, shall not be considered for grants and such applications shall be returned to the applicants.

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(3) Project Application Forms. Requests for Landfill Capping Grants shall be submitted on Project Application Forms provided by the Department along with any other documentation required by the Department.

(4) Certification of Applications. The Department shall review each application to determine its compliance with 310 CMR 37.00 and to determine the adequacy, accuracy, and completeness of the information contained therein. Applications deemed ineligible pursuant to the provisions of 310 CMR 37.03 will be so certified and returned to the applicants with written explanation of the Department's determination. Upon completion of its review of each application the Department shall certify in writing that the application is complete or incomplete, including the date of such certification. The Department may require applicants to provide additional information and/or attend meetings. In the case of an incomplete application, the Department shall set forth the inadequacies of the application and specify a date by which such inadequacies must be corrected and received by the Department. When inadequacies in the application have been corrected by the applicant, the Department may then certify the application as complete. Failure of the applicant to provide adequate, accurate or complete information relative to any project may result in an inaccurate rating of the project. If the Project Application Form as submitted or resubmitted is received after the specified date for resubmission or is determined to be inadequate to rate the Project in accordance with 310 CMR 37.07, that application shall be certified as incomplete and returned to the applicant. No applicant whose application is certified as incomplete may be eligible to receive a Landfill Capping Grant.

37.06: Priority System

(1) Priority List. The Department shall rate each application certified as complete based on the criteria set forth in 310 CMR 37.07(1). Based on these ratings, applications shall be ranked on a priority list in numerically descending order.

The priority list will be comprised of a "fundable" and an "extended" portion. The fundable portion shall include the projects of highest ranking which may receive Landfill Capping Grants contingent upon the availability of funds. The extended portion shall include all other eligible projects ranked in descending order of priority.

(2) Bypass procedure. Only projects listed by the Department on the fundable portion of the priority list are eligible to receive a Landfill Capping Grant except as provided by the bypass procedure. A project on the fundable portion may be bypassed for the award of a Landfill Capping Grant if the Department determines the project will not be ready to proceed during the required time as outlined in 310 CMR 37.09(7) or if the applicant fails to satisfy one of the other grant preconditions as set forth in 310 CMR 37.08(3). A project bypassed on the fundable portion shall be replaced by the highest ranked project on the extended portion of the list that is ready to proceed and for which there is available funding.

(3) Publication of Lists. Upon completion of the lists pursuant to the preceding 310 CMR 37.06(1), the Department shall provide notice of the lists by mailing copies of the list to all entities which submitted Project Application Forms and generally making such lists available to the public upon request.

37.07: Rating Criteria

(1) Project Application Forms which have been certified as complete shall be rated according to the criteria set forth below:

- (a) The extent to which a landfill threatens to contaminate or has contaminated a public or private drinking water supply.
- (b) The extent to which a landfill is an actual or potential environmental threat, including to surface water bodies.

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- (c) The extent to which the landfill has functioning groundwater monitoring wells in place and has had an adequate hydrogeological study recently performed.
- (d) The applicant's record of compliance with M.G.L. c. 111, § 150A and 310 CMR 19.00
- (e) The extent to which the applicant has assessed the options for the long-term disposal of municipal refuse after the closure of the landfill owned by the applicant and has selected a feasible option which provides for the long-term disposal of wastes in a manner which is cost-effective and environmentally sound.
- (f) The extent to which the applicant fulfills the demonstration component requirements, pursuant to 310 CMR 37.03(1)(f).

(2) The numerical rating criteria set forth below shall be used to assign points to the projects:

RATING CRITERIA:

Question	Rating	Points
Threat to Drinking Water (public/private)	High Threat.....	21 - 30
	Moderate Threat.....	11 - 20
	Low Threat.....	1 - 10
	No Threat.....	0
Environmental Threat (other Than to drinking water)	High Threat.....	15 - 20
	Moderate Threat.....	8 - 14
	Low Threat.....	1 - 7
	No Threat.....	0
Hydrogeological Assessment	Detailed.....	14 - 20
	Good.....	7 - 13
	Adequate.....	1 - 6
	None.....	0
Environmental Compliance Record	Excellent.....	31 - 40
	Good.....	21 - 30
	Fair.....	11 - 20
	Poor.....	0 - 10
Long Term Solid Waste Management Plan	Good.....	14 - 20
	Fair.....	7 - 13
	Poor.....	0 - 6
Demonstration Component/Technical Approach	Excellent.....	27 - 35
	Good.....	18 - 26
	Fair.....	9 - 17
	Poor.....	0 - 8
Demonstration Component/Evaluation Potential	Excellent.....	27 - 35
	Good.....	18 - 26
	Fair.....	9 - 17
	Poor.....	0 - 8

37.08: Request For A Landfill Capping Grant

(1) In General. Applicants whose Project Application Forms are ranked on the fundable portion of the Priority List will be sent appropriate forms to request a grant. Such forms along with specified supporting documents shall be submitted to the Department within the time period stated in the notification or otherwise agreed to by the Department.

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(2) Preconditions to the Consideration of a Landfill Capping Grant Request. No request for the award of a grant will be considered without satisfactory completion of a grant application and timely submission of all project documentation requested by the Department. In addition, grant requests shall include submission of the following documents:

- (a) a certified copy of authorization to file a grant request on behalf of the applicant;
- (b) a copy of the City Counsel or Town Meeting action agreeing to appropriate the local share of funds for the project;

(3) Preconditions to the Award of a Landfill Capping Grant. No landfill Capping Grant shall be awarded except upon satisfaction or execution of assurances as to the following conditions:

- (a) evidence that the applicant is in compliance with 301 CMR 50.00: *Affirmative Action* (the Executive Office of Environmental Affairs);
- (b) that the Deed restriction, in a form approved by the Department, has been properly recorded.
- (c) a copy of the City Counsel or Town Meeting Action appropriating the local share of funds for the project.

37.09: Grant Awards

(1) Execution. The grant shall be deemed awarded when the grant agreement is executed by the Department and the grantee. The grant agreement shall consist of the grant offer as executed by the Department and the grant acceptance executed by the grantee.

(2) Project Scope. The project scope shall be as described in the project plans and specifications approved by the Department. The grant amount shall be the amount stated in the final grant offer.

(3) Grant Limitation. A landfill Capping Grant may fund up to 80% of those eligible costs of the project which the Department determines to be appropriate for funding, except that no single grant may exceed \$500,000 unless it is determined by the Commissioner that additional funding is necessary and justified to realize the benefits of the demonstration component of the project. In no case shall funding for any project exceed \$1,000,000. In the event that a project moves from the extended portion of the priority list to the fundable portion, the dollar amount for that project shall be contingent upon the availability of funds.

(4) Other Grant Terms. The following provisions shall be included as terms of all grant agreements except as may be modified in writing at the discretion of the Department or inapplicable because a grant is awarded for work already done.

- (a) That the construction work will be performed by a lump sum or unit price contract method or combination thereof.
- (b) That the applicant will submit a copy of all bid tabulations, a copy of the low bid, and a letter of intent to award the contract to the lowest responsible bidder for approval prior to awarding the contract.
- (c) That the applicant shall submit a copy of all contracts for Department review and approval prior to their execution.
- (d) That any change or changes in a construction contract which substantially modify the proposed closure project will be submitted to the Department for prior approval.
- (e) That all change orders or extra work orders not requiring prior approval will be submitted to the Department within one month of the time at which they are ordered by the applicant or engineer.
- (f) That the construction of the project including the letting of the contract will conform to all applicable requirements of Federal, State, and local laws, ordinances, by-laws, rules and regulations.
- (g) That representatives of the Department shall have access to the work whenever it is in preparation or progress, that proper facilities will be furnished for such access and inspection, and all construction contracts will so provide.

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(h) That the applicant will at all times provide and maintain competent and adequate resident supervision and inspection under the direction of a licensed professional engineer who will have the responsibility of ensuring that the construction conforms with the approved plans and specifications and certifying to the applicant and the Department at the completion of construction that the construction is in accordance with the approved plans and specifications or approved amendments thereto. An executed copy of the contract between the grantee and resident engineer shall be provided to the Department within 30 days of the award of the contract.

(i) That adequate accounting and fiscal records will be maintained so as to reflect the receipt and expenditure of funds for the purpose of the eligible project, and all funds, however provided, for the payment of the cost of the project, will be credited promptly upon receipt thereof to a separate construction account or accounts. All such records shall be kept for a period of six years or for such longer period as may be specified in a grant agreement. All retention periods start on the first day after termination or completion of a contract for project services. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the applicable retention period, all records shall be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the applicable retention period, whichever is later.

The Governor, the Secretary of Administration and Finance, the director of the Department, the Department's executive office secretary, and the State Auditor or their designees shall have the right at reasonable times and upon reasonable notice to examine and copy at reasonable expense the books, records and compilations of data of the grantee which pertain to the provisions of any grant award and any contract awarded and paid with grant funds.

(j) That the construction, design, and/or engineering contracts will be so prepared that eligible items will be readily segregated from non-eligible items and so that materials and equipment to be used on the project may be readily itemized.

(5) Other Funding. The Department shall condition its grant offer as follows: The total of all funds received by the grantee for the project from all sources, including betterments shall not exceed 100% of the total project cost. In the event the total of all funds received by the grantee exceed 100% of the total project costs, the Department shall reduce its grant offer or grant award such that the total funds received by the applicant for the project do not exceed 100% of the total project cost. Any funds previously received by the grantee in excess of a revised grant award shall be reimbursed to the Department within 60 days of the revised grant award.

(6) Payment. Payment of the grant award to the grantee shall be made as a reimbursement for all eligible costs pursuant to 310 CMR 37.04(2) and (4). In the case of construction costs, all reimbursements shall be made upon the Department's receipt of invoices certified as paid by the applicant.

(7) Contract Delay. Failure of a grantee to award a construction contract and to commence work within 12 months of the execution date of the grant agreement shall constitute sufficient cause for the Department to withdraw its grant award. Prior to termination of a Landfill Capping Grant, the Department shall give due consideration to any extenuating circumstances presented in writing by the grantee and may extend the grant commitment for an additional period of up to six months, if the Department determines such an extension is warranted.

(8) Suspension of Grant Payments. The Department may temporarily suspend a Landfill Capping Grant whenever the Department becomes aware of: allegations, evidence, or appearance of illegality, corruption, or fraud associated with the award of the grant; allegations or evidence of failure to comply with the terms of 310 CMR 37.00 or the terms of a grant agreement; or, allegations or evidence of improprieties with respect to the expenditure of project funds, compliance with 310 CMR 37.00, terms of agreement, or expenditure of project funds.

37.09: continued

(9) Termination of Grant Payments. The Department shall terminate and revoke a Landfill Capping Grant whenever the Department determines that there is substantial evidence: of illegality, corruption or fraud associated with the award of the grant; noncompliance with 310 CMR 37.00, terms of the grant agreement; or improprieties with respect to expenditure of project funds. Written notice to the applicant shall be provided whenever a grant is terminated and revoked. and the grantee shall return all grant funds to the Department within 60 days.

37.10: Project Management Requirements

(1) Grant Terms and Conditions. The grantee is responsible for complying with the terms and conditions in the grant agreement. This responsibility is non-transferable. The grantee shall maintain a record of programmatic activities and a financial management system which provides effective control of all project funds.

(2) Records. The grantee shall maintain books, records, documents and supporting evidence which fully explain the source, amount and disposition of all funds for the project.

The grantee and its contractor(s) shall make records available to the Department at all reasonable times for inspection, copying, and auditing.

Separate records shall be kept for in-kind services.

37.11: Environmental Compliance

(1) Any landfill closed pursuant to St. 1983, c. 723, § 9H, as amended by St, 1984, c. 233, § 9H shall be closed in accordance with M.G.L. c. 111, § 150A and 310 CMR 19.00 and other applicable statutes or regulations.

(2) Any landfill closed pursuant to St. 1983, c. 723, § 9H, as amended by St, 1984, c. 233, § 9H shall be closed in accordance with a plan approved by the Department.

37.12: Severability

If any provision of 310 CMR 37.00 or its applications to any unit of government is held invalid, such invalidity shall not affect other provisions or applications of 310 CMR 37.00 which can be given effect without the invalid provision or application, and to this end the provisions of 310 CMR 37.00 are declared to be severable.

REGULATORY AUTHORITY

310 CMR 37.00: St. 1983, c. 723. as amended by St. 1984, c. 233.

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